

1 MARK JOSEPH KENNEY (State Bar No. 87345)
2 DAVID E. PINCH (State Bar No. 124851)
3 dep@severson.com
4 SEVERSON & WERSON
5 A Professional Corporation
6 One Embarcadero Center, Suite 2600
7 San Francisco, California 94111
8 Telephone: (415) 398-3344
9 Facsimile: (415) 956-0439

6 Attorneys for Defendant
7 RECONTRUST COMPANY, N.A.

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CRUZ

11 KIMBERLY COX,

12 Plaintiff,

13 vs.

14 RECONTRUST COMPANY, N.A.; all
15 persons known or unknown claiming any legal
16 or equitable right, title, estate, lien or interest
17 in the property described in this Complaint
18 adverse to COX's title or any cloud upon
19 COX's title thereto; and DOES 1-100
20 inclusive,

18 Defendants.

Case No. CV174201

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS'
DEMURRER TO PLAINTIFF'S
COMPLAINT**

Date: July 18, 2012
Time: 8:30 a.m.
Dept.: 4

*(Filed concurrently with Notice of Demurrer
and Demurrer; Memorandum of Points and
Authorities; (Proposed) Order)*

Action Filed: May 24, 2012
Trial Date: none set

21 Pursuant to Evidence Code section 452(h), which allows the Court to take judicial notice
22 of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate
23 and accurate determination by resort to sources of reasonably indisputable accuracy," defendant
24 RECONTRUST COMPANY, N.A. ("Defendant") requests that the Court take judicial notice of
25 the following recorded documents, because they are official public records, duly recorded in the
26 Official Records of San Diego County, the contents and authenticity of which "cannot be
27 reasonably controverted." (See *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540,
28 549 ("[t]he court may take judicial notice of recorded deeds").)

70000.0811/2244578.1

CV174201

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT'S DEMURRER TO PLAINTIFF'S
COMPLAINT

1 Exhibit A: Bankruptcy Schedules filed in the bankruptcy of Kimberly Cox in the
2 Northern District of California as Case No. 5:10-bk-61716.

3 Exhibit B: Bankruptcy Discharge and Trustee's Notice of No Assets filed in the
4 bankruptcy of Kimberly Cox in the Northern District of California as Case No. 5:10-bk-61716 on
5 January 27, 2012.

6 Exhibit C: Bankruptcy Adversary Complaint filed by Kimberly Cox filed in the
7 bankruptcy of Kimberly Cox in the Northern District of California as Case No. 5:10-bk-61716 as
8 Adversary No. 11-5106 styled as Kimberly Cox vs. Reconstrust Company, N.A. et al.

9 Exhibit D: Bankruptcy Order Dismissing Adversary Action of Kimberly Cox in the
10 Northern District of California as Case No. 5:10-bk-61716 as Adversary No. 11-5106 styled as
11 Kimberly Cox vs. Reconstrust Company, N.A. et al.

12 Exhibit E: Transcript of hearing on Motion to Dismiss as heard in the Adversary
13 Action of Kimberly Cox in the Northern District of California as Case No. 5:10-bk-61716 as
14 Adversary No. 11-5106 styled as Kimberly Cox vs. Reconstrust Company, N.A. et al.

15 Exhibit F: Fictitious Business Name Statement of Countrywide Home Loans, Inc. as
16 America's Wholesale Lender as filed with the Clerk of Santa Cruz County.

17
18
19 DATED: June 15, 2012

SEVERSON & WERSON
A Professional Corporation

20
21
22 By: 
DAVID E. PINCH

23 Attorneys for Defendants
24 RECONTRUST COMPANY, N.A.

Exhibit A

IN RE Cox, Kimberly

Case No. 10-61716 CN 7

Debtor(s)

(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Real Property at 131 Sutphen St., Santa Cruz, CA 95060, APN 008-091-17	Fee Simple	W	unknown	6,541.00

TOTAL 0.00

(Report also on Summary of Schedules)

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IN RE **Cox, Kimberly**

Debtor(s)

Case No. **10-61716 CN 7**

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 008-091-17 County of Santa Cruz Treasurer - Tax Col 701 Ocean Street Santa Cruz, CA 95060	W	Property taxes fort 131 Sutphen St., Santa Cruz, CA 95060. Contingent on selling property and paying from proceeds of sale.	X			6,541.00	6,541.00
		VALUE \$					
ACCOUNT NO.							
		VALUE \$					
ACCOUNT NO.							
		VALUE \$					
ACCOUNT NO.							
		VALUE \$					

0 continuation sheets attached

Subtotal (Total of this page)	\$ 6,541.00	\$ 6,541.00
Total (Use only on last page)	\$ 6,541.00	\$ 6,541.00

(Report also on Summary of Schedules.) (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

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SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Domestic Support Obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

Claims for Death or Personal Injury While Debtor Was Intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

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SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 085583668 America's Wholesale Lender P.O. Box 10219 Van Nuys, CA 91410-0219	W	Claim allegedly incurred 12/10/2004. Consideration for claim was to refinance real property at 131 Sutphen St., Santa Cruz, CA 95060. Debtor contends that if this debt is proven to exist at all, it is unsecured and subject to discharge. Subject to Setoff	X	X	X	unknown
ACCOUNT NO. Countrywide Home Loans, Inc. P.O. Box 10423 Van Nuys, CA		Assignee or other notification for: America's Wholesale Lender				
ACCOUNT NO. The Bank of New York 101 Barclay St. 4W New York, NY 10286		Assignee or other notification for: America's Wholesale Lender				
ACCOUNT NO. The Bank Of New York Mellon As Trustee C/O BAC Home Loans Servicing 400 Countrywide Way SV-35 Simi Valley, CA		Assignee or other notification for: America's Wholesale Lender				

4 continuation sheets attached

Subtotal
(Total of this page) \$

Total
(Use only on last page of the completed Schedule F. Report also on the Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) \$

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IN RE Cox, Kimberly

Case No. 10-61716 CN 7

Debtor(s)

(If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 3732-712633-81002 American Express P.O. Box 0001 Los Angeles, CA 90096-8000	W	Unknown date incurred. Consideration miscl. credit card charges.				4,648.62
ACCOUNT NO. 3725-731583-81000 American Express P.O. Box 0001 Los Angeles, CA 90096-8000	W	Unknown date claim incurred. Consideration was for miscl. credit card charges.				17,574.09
ACCOUNT NO. 3499907566476833 American Express P.O. Box 981537 El Paso, TX 79998	W	Unknown date claim was incurred. Consideration was miscl. credit card charges.				17,574.00
ACCOUNT NO. 085583668 BAC Home Loans Servicing, LP P.O. Box 515503 Los Angeles, CA 90051-6803	W	Date claim was incurred is unknown. Claim is allegedly for real property at 131 Sutphen St., Santa Cruz, CA 95060. Debtor contends that if this debt is proven to exist at all, it is unsecured and subject to discharge. Subject to Setoff	X	X	X	581,688.46
ACCOUNT NO. 7497-5026-920-250 Bank of America P.O. Box 851001 Dallas, TX 75285-1001	W	Unknown when Claim was incurred. Consideration was for miscl. credit card charges.				46,215.00
ACCOUNT NO. 5178-0526-0679-4689 Capital One Bank P.O. Box 60599 City Of Industry, CA 91716-0599	W	Unknown date claim was incurred. Consideration was miscl. credit card charges.				15,201.00
ACCOUNT NO. 4147-2020-1046-9110 Chase P.O. Box 94014 Palatine, IL 60094-4014	W	Unknown date claim was incurred. Consideration was for misc. credit card charges.				6,123.00

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Sheet no. 1 of 4 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) \$ **689,024.17**

Total
(Use only on last page of the completed Schedule F. Report also on the Summary of Schedules, and if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)

\$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBATOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 4246-1520-2606-7566 Chase P.O. Box 94014 Palatine, IL 60094-4014	W	Unknown date claim was incurred. Consideration was for miscl. credit card charges.				4,897.00
ACCOUNT NO. 4266-8411-6945-3931 Chase P.O. Box 94014 Palatine, IL 60094-4014	W	Unknown date incurred. Consideration was for miscl. credit card charges.				5,394.00
ACCOUNT NO. 4444-0010-0813-7030 Chase P.O. Box 94014 Palatine, IL 60094-4014	W	Unknown date claim was incurred. Consideration was for miscl. credit card charges.				3,154.00
ACCOUNT NO. 5222-7631-4004-6230 Chase P.O. Box 94014 Palatine, IL 60094-4014	W	Unknown date claim was incurred. Consideration was for miscl. credit card charges.				6,573.00
ACCOUNT NO. 4640-1820-1328-0957 Chase P.O. Box 94014 Palatine, IL 60094-4014	W	Unknown date claim was incurred. Consideration for cliam was for miscl. credit card charges.				4,714.00
ACCOUNT NO. 4417-1125-7250-5289 Chase P.O. Box 94014 Palatine, IL 60094-4014	W	Unknown date claim was incurred. Consideration was for miscl. credit card charges.				6,741.00
ACCOUNT NO. 5410-6547-0621-4118 CITIBANK (SOUTH DAKOTA) N.A. 701 E 60th St. N. Sioux Falls, SD 57104	W	Unknown date claim was incurred. Consideration was for miscl. credit card charges.				8,345.22

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Sheet no. 2 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **39,818.22**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT		AMOUNT OF CLAIM	
			UNLIQUIDATED	DISPUTED		
ACCOUNT NO. 6035320063300410 CITIBANK (SOUTH DAKOTA) N.A./HOME DEPOT P.O. Box 7032 Sioux Falls, SD 57117-7032	W	Unknown date claim was incurred. Consideration for claim was for miscl. credit card charges.			8,351.30	
ACCOUNT NO. 5410-6547-0621-4110 CitiCard P.O. Box 6000 The Lakes, NV 89163-6000	W	Unknown date claim was incurred. Consideration was for miscl. credit card charges.			8,345.00	
ACCOUNT NO. 4195-0910-0017-4587 GEMoney Bank Chevron Texaco P.O. Box 981430 El Paso, TX 79998-1430	W	Claim incurred 2000-2010			877.90	
ACCOUNT NO. 6035-3200-6330-0410 Home Depot Credit Services P.O. Box 182676 Columbus, OH 43218-2676	W	Unknown date claim was incurred. Consideration for claim was for miscl. credit card charges.			8,531.30	
ACCOUNT NO. 085583668 RECONTRUST Company 1800 Tapo Canyon Rd., CA6-914-01-94 Simi Valley, CA 93063	W	Unknown when this alleged claim was supposedly incurred. This is a duplicate claim. Debtor contends that if this debt is proven to exist at all, it is unsecured and subject to discharge. Subject to Setoff	X	X	X	unknown
ACCOUNT NO. 4037-6982-4700-0011 US Bank PO Box 790408 St. Louis, MO 63179-0408	W	Unknown date claim was incurred. Consideration for claim was for miscl. credit card charges.			22,817.88	
ACCOUNT NO. 4270-8110-1092-7395 USAA Credit Card Services 10750 McDermott Fwy San Antonio, TX 98288-0570	W	Unknown date claim was incurred. Consideration for claim was for miscl. credit card charges.			6,105.00	

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Sheet no. 3 of 4 continuation sheets attached to
Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) \$ **55,028.38**

Total
(Use only on last page of the completed Schedule F. Report also on
the Summary of Schedules, and if applicable, on the Statistical
Summary of Certain Liabilities and Related Data.) \$

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER. <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 5458-8310-1092-7394 USAA Credit Card Services 10750 McDermott Fwy San Antonio, TX 98288-0570	W	Unknown date claim was incurred. Consideration for claim was for miscl. credit card charges.				6,105.00
ACCOUNT NO.						
ACCOUNT NO.						
ACCOUNT NO.						
ACCOUNT NO.						
ACCOUNT NO.						
ACCOUNT NO.						

Sheet no. 4 of 4 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) \$ **6,105.00**

Total (Use only on last page of the completed Schedule F. Report also on the Summary of Schedules, and if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) \$ **789,975.77**

Debtor(s)

(If known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): Son	AGE(S): 23
EMPLOYMENT: DEBTOR		SPOUSE
Occupation	Student Business Services	
Name of Employer	University Of California	
How long employed	7 years and 6 months	
Address of Employer	Santa Cruz, CA 95060-5728	

INCOME: (Estimate of average or projected monthly income at time case filed)

	DEBTOR	SPOUSE
1. Current monthly gross wages, salary, and commissions (prorate if not paid monthly)	\$ 4,817.07	\$ _____
2. Estimated monthly overtime	\$ _____	\$ _____
3. SUBTOTAL	\$ 4,817.07	\$ _____
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and Social Security	\$ 2,348.89	\$ _____
b. Insurance	\$ 173.51	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (specify) <u>See Schedule Attached</u>	\$ 530.81	\$ _____
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ 3,053.21	\$ _____
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ 1,763.86	\$ _____
7. Regular income from operation of business or profession or farm (attach detailed statement)	\$ _____	\$ _____
8. Income from real property	\$ _____	\$ _____
9. Interest and dividends	\$ _____	\$ _____
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ _____	\$ _____
11. Social Security or other government assistance (Specify) _____	\$ _____	\$ _____
12. Pension or retirement income	\$ _____	\$ _____
13. Other monthly income (Specify) <u>Trilogy - Pet Food Biz</u>	\$ 4.00	\$ _____
14. SUBTOTAL OF LINES 7 THROUGH 13	\$ 4.00	\$ _____
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	\$ 1,767.86	\$ _____
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15; if there is only one debtor repeat total reported on line 15)	\$ 1,767.86	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:
None

Debtor(s)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

Continuation Sheet - Page 1 of 1

	DEBTOR	SPOUSE
Other Payroll Deductions:		
UCRP	77.34	
OASDI	280.71	
Supplemental Life	17.77	
Supplemental Disability	34.19	
AD&D Insur	4.80	
Health FSA	50.00	
Parking MLYR	66.00	

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made biweekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	\$ <u>2,646.00</u>
a. Are real estate taxes included? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
b. Is property insurance included? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
2. Utilities:	
a. Electricity and heating fuel	\$ <u>140.00</u>
b. Water and sewer	\$ <u>112.00</u>
c. Telephone	\$ <u>175.00</u>
d. Other <u>Personal Expenses (Haircuts, Newspaper, Etc.)</u>	\$ <u>180.00</u>
3. Home maintenance (repairs and upkeep)	\$ <u>250.00</u>
4. Food	\$ <u>500.00</u>
5. Clothing	\$ <u>120.00</u>
6. Laundry and dry cleaning	\$ <u>20.00</u>
7. Medical and dental expenses	\$ <u>60.00</u>
8. Transportation (not including car payments)	\$ <u>200.00</u>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ <u>150.00</u>
10. Charitable contributions	\$ <u>50.00</u>
11. Insurance (not deducted from wages or included in home mortgage payments)	
a. Homeowner's or renter's	\$ <u>90.00</u>
b. Life	\$ _____
c. Health	\$ _____
d. Auto	\$ <u>269.00</u>
e. Other <u>Health Insurance - Son</u>	\$ <u>120.00</u>
12. Taxes (not deducted from wages or included in home mortgage payments) (Specify) <u>Income Tax</u>	\$ _____
13. Installment payments: (in chapter 11, 12 and 13 cases, do not list payments to be included in the plan)	
a. Auto	\$ _____
b. Other	\$ _____
14. Alimony, maintenance, and support paid to others	\$ _____
15. Payments for support of additional dependents not living at your home	\$ _____
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ <u>4,086.00</u>
17. Other <u>Pet Food</u>	\$ <u>120.00</u>

18. **AVERAGE MONTHLY EXPENSES** (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data. \$ 9,288.00

19. Describe any increase or decrease in expenditures anticipated to occur within the year following the filing of this document:
Moving expense expected increase in expenditures, decrease in income.

20. STATEMENT OF MONTHLY NET INCOME	
a. Average monthly income from Line 15 of Schedule I	\$ <u>1,767.86</u>
b. Average monthly expenses from Line 18 above	\$ <u>9,288.00</u>
c. Monthly net income (a. minus b.)	\$ <u>-7,520.14</u>

IN RE Cox, Kimberly

Case No. 10-61716 CN 7

Debtor(s)

(If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 19 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date: February 2, 2011 Signature: Kimberly Cox
Kimberly Cox Debtor

Date: _____ Signature: _____
(Joint Debtor, if any)
[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342 (b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer _____ Social Security No. (Required by 11 U.S.C. § 110.)
If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.

Address _____

Signature of Bankruptcy Petition Preparer _____ Date _____

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provision of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the _____ (the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership) of the _____ (corporation or partnership) named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets (total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date: _____ Signature: _____

(Print or type name of individual signing on behalf of debtor)

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

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Notice Recipients

District/Off: 0971-5

User: kdu

Date Created: 1/27/2012

Case: 10-61716

Form ID: ODSC7fi

Total: 49

Recipients of Notice of Electronic Filing:

ust Office of the U.S. Trustee / SJ USTPRegion17.SJ.ECF@usdoj.gov
aty Emily S. Keller emily.s.keller@usdoj.gov
aty Timothy Yett Suen Fong tyfong919@gmail.com

TOTAL: 3

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db Kimberly Cox 131 Sutphen St. Santa Cruz, CA 95060
tr John W. Richardson 5161 Soquel Dr. #F Soquel, CA 95073
reqntc GE Money Bank c/o Recovery Management Systems Corp. 25 SE 2nd Avenue, Suite 1120 Miami, FL 33131-1605
smg State Board of Equalization Attn: Special Procedures Section, MIC:55 P.O. Box 942879 Sacramento, CA 94279
smg CA Employment Development Dept. Bankruptcy Group MIC 92E P.O. Box 826880 Sacramento, CA 94280-0001
smg CA Franchise Tax Board Attn: Special Procedures P.O. Box 2952 Sacramento, CA 95812-2952
smg Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101-7346
11420065 America's Wholesale Lender P.O. Box 10219 Van Nuys, CA 91410-0219
11420066 American Express P.O. Box 0001 Los Angeles, CA 90096-8000
11420068 American Express P.O. Box 956842 St. Louis, MO 64195
11420067 American Express P.O. Box 981537 El Paso, TX 79998
11420069 BAC Home Loans Servicing, LP 400 Countrywide Way SV-35 Simi Valley, CA 93065
11420070 Bank of America P.O. Box 851001 Dallas, TX 75285-1001
11420073 CITIBANK (SOUTH DAKOTA) N.A. 701 E 60th St. N. Sioux Falls, SO 57104
11420074 CITIBANK (SOUTH DAKOTA) N.A./HOME DEPOT P.O. Box 7032 Sioux Falls, SO 57117-7032
11420078 CTC Real Estate Services 400 Countrywide Way, MSN SV-88 Simi Valley, CA 93065
11420071 Capital One Bank P.O. Box 60599 City Of Industry, CA 91716-0599
11420072 Chase P.O. Box 94014 Palatine, IL 60094-4014
11420075 Citi Card P.O. Box 6000 The Lakes, NV 89163-6000
11420076 Client Services, Inc. 3451 Harry Truman Blvd. St. Charles, MO 63301-4047
11420077 County of Santa Cruz Treasurer - Tax Col 701 Ocean Street Santa Cruz, CA 95060
11420079 Elizabeth A. Bleier Bleier & Cox 16130 Ventura Blvd. Encino, CA 91436-3366
11420080 Firstsource Advantage, LLC 205 Bryant Woods South Amherst, NY 14228
11420081 Frederick J. Hanna & Associates, P.C. 1427 Roswell Road Marietta, GA 30062
11420082 GC Services Limited Partnership Collection Agency Division 6330 Gulf ton Houston, TX 77081
11496770 GE Money Bank c/o Recovery Management Systems Corp. 25 SE 2nd Avenue, Suite 1120 Miami, FL 33131-1605 Attn: Ramesh Singh
11420083 Home Depot Credit Services P.o. Box 182676 Columbus, OH 43218-2676
11420084 Hunt & Henriques Attorneys At Law 151 Bernal Road, Suite 8 San Jose, CA 95119-1306
11420085 James E. Cox 16130 Ventura Boulevard, Suite 620 Encino, CA 91436
11420086 Janalie Henriques Hunt & Henriques 151 Bernal Road, Suite 8 San Jose, CA 95119-1306
11420087 Michael S. Hunt Hunt & Henriques 151 Bernal Road, Suite 8 San Jose, CA 95119-1306
11420088 Mortgage Electronic Registration Systems P.O. Box 2026 Flint, MI 48501-2026
11420091 NCO Financial Systems, Inc. 507 Prudential Road Horsham, PA 19044
11420092 NCO Financial Systems, Inc. PO Box 15773 Wilmington, DE 19850-5773
11420089 Nationwide Credit, Inc. 2015 Vaughn Rd., Building 400 Kennesaw, GA 30144-7802
11420090 Nationwide Credit, Inc. PO Box 740640 Atlanta, GA 30374-0640
11420093 Nelson & Kennard 2180 Harvard Street, Suite 160 Sacramento, CA 95853
11420094 Phillips & Cohen Associates 695 Rancocas Rd. West Hampton, NJ 08060
11420095 Phillips & Cohen Associates P.O. Box 108 St. Louis, MO 63166
11420096 RECONTRUST Company 1800 Tapo Canyon Rd., CA6-914-01-94 Simi Valley, CA 93063
11420097 Richard E. Golden Bleier & Cox 16130 Ventura Boulevard Encino, CA 91436-2568
11420099 US Bank PO Box 790408 St. Louis, MO 63179-0408
11420100 USAA Credit Card Services 10750 McDermott Fwy San Antonio, TX 98288-0570
11420098 United Recovery Systems P.O. Box 722910 Houston, TX 77272-2910
11420102 Zwicker & Associates, P.C. 80 Minuteman Rd. Andover, MA 01810-1008
11420101 Zwicker & Associates, P.C. P.O. Box 101145 Birmingham, AL 35210-6145

TOTAL: 46

Exhibit C

1 Timothy Y. Fong
CA SBN #255221
2 3333 Bowers Avenue, STE 130
3 Santa Clara, CA 95054
4 Tel 408-627-7810
5 Fax 408-457-9417
6 tyfong919@gmail.com

7 Attorney for Debtor
8 Kimberly Cox - 9054
9 131 Sutphen St.
10 Santa Cruz, CA 95060

11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 In re:
14 KIMBERLY COX
15 Debtor

Case No. 5:10-bk-61716

Chapter 7

16 KIMBERLY COX
17 Plaintiff,
18 vs.

COMPLAINT TO DETERMINE THE
VALIDITY, EXTENT, INTEREST,
AND SECURED STATUS OF ALLEGED
LIEN AND ASSOCIATED DEBT; TO
DISALLOW CLAIMS AS SECURED AND
CANCEL SECURITY INSTRUMENT;
FOR DECLARATORY RELIEF; FOR
INJUNCTIVE RELIEF TO STOP
FORECLOSURE; AND, TO QUIET
TITLE

19 RECONTRUST COMPANY, N.A.;
20 MORTGAGE ELECTRONIC REGISTRATION
21 SYSTEMS, INC.; THE BANK OF NEW
22 YORK MELLON FKA THE BANK OF NEW
23 YORK AS TRUSTEE FOR THE BENEFIT
24 OF THE CERTIFICATEHOLDERS CWMBS,
25 INC. CHL MORTGAGE PASS-THROUGH
26 TRUST 2005-2 MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2005-2; AMERICA'S WHOLESALE
LENDER; COUNTRYWIDE HOME LOANS,
INC.; BAC HOME LOANS SERVICING,
LP; does 1-1000; and, all
persons unknown, claiming any
legal or equitable right, title,
estate, lien, or interest in the
property described in the
complaint adverse to Plaintiff's
title

UNITED STATES BANKRUPTCY COURT
Northern District of California

I certify that this is a true, correct and full copy
of the original document on file in my custody.

Dated 01/31/12
by C. L. Phelps
Deputy Clerk

Defendants.

Adv. Proc. No.



1 COMES NOW debtor and plaintiff KIMBERLY COX ("COX") who herein
2 alleges the following:

3 JURISDICTION AND VENUE

4 1. The United States Bankruptcy Court for the Northern
5 District of California has jurisdiction over this proceeding
6 pursuant to §§ 151, 157 and 1334(b) of Title 28 of the United
7 States Code.

8 2. This Adversary Proceeding is brought pursuant to §§ 105,
9 506 and 523 of the Bankruptcy Code, § 3201 et seq. of the
10 California Commercial Code, California Code of Civil Procedure §
11 760.010 et seq., Civil Code § 2923.5 and Rule 7001 of the
12 Federal Rules of Bankruptcy Procedures.

13 3. The Claims for relief asserted herein arise under §§ 105,
14 506 and 523 of the Bankruptcy Code, and arise in a Chapter 7
15 Case under Title 11 of the United States Code. This adversary
16 proceeding is a core proceeding within the meaning of § 157(b)
17 et seq of Title 28 of the United States Code in that this is an
18 action to determine the nature, extent and validity of an
19 alleged lien (through a purported Deed of Trust) on property
20 evidenced by an alleged note that Defendants have failed to
21 produce or otherwise show that they are real parties in
22 interest, holders, holders in due course or otherwise true
23 creditors therefore requiring a determination of the allowance
24 or disallowance of any claim(s) Defendants might make.

25 4. Venue is proper in this district pursuant to Section 1409
26 of Title 28 of the United States Code.

1 PARTIES

2 **PLAINTIFF:**

3 5. KIMBERLY COX ("COX") is an individual, and debtor within
4 the above captioned bankruptcy case, having filed a voluntary
5 petition for relief under Chapter 7 of the Bankruptcy Code on
6 11/12/2010 in the United States Bankruptcy Court Northern
7 District of California and is an individual who at all times
8 herein resides in the County of Santa Cruz, City of Santa Cruz
9 and is the owner and occupant of the real property described as
10 follows and otherwise commonly known as 131 Sutphen St., Santa
11 Cruz, CA 95060 ("Property"):

12 LOT 8, AS THE SAME IS SHOWN AND DESIGNATED UPON THAT
13 CERTAIN MAP ENTITLED, "SUTPHENS ADDITION TO SANTA CRUZ,
14 SEPT. 1889, E. D. PERRY, SURVEYOR", FILED FOR RECORD IN
THE OFFICE OF THE COUNTY RECORDER ON SEPTEMBER 26, 1889,
IN MAP BOOK 10, PAGE 22, SANTA CRUZ COUNTY RECORDS.

15 EXCEPTING THEREFROM THE HEREINABOVE DESCRIBED LANDS SO
16 MUCH AS WAS CONVEYED TO A. L. WHITNEY BY DEED RECORDED
17 JULY 16, 1890, IN VOLUME 73 OF DEEDS, PAGE 352, RECORDS
18 OF SANTA CRUZ COUNTY, BEING A STRIP OF LAND APPROXIMATELY
EIGHT FEET IN WIDTH ALONG THE NORTHERLY LINE OF SAID
LANDS TO BE --"PERPETUALLY KEPT OPEN, USED AND MAINTAINED
AS AN ALLEY WAY--".

19 APN: 008-091-17

20 **DEFENDANTS:**

21 6. Defendant RECONTRUST COMPANY, N.A. ("RECON") is not
22 listed on the California Secretary of State's website as a
23 California registered Corporation or LLC. COX could not find
24 any other business license or registration for RECON and
25 therefore remains a business type unknown to COX. RECON'S
26 address is shown as 1800 Tapo Canyon Rd., Simi Valley, CA 93063.

1 (See Exhibit No. 1) COX is therefore informed and believes, and
2 thereon alleges, that RECON, at all times mentioned herein, is
3 not licensed or registered to conduct business in California or
4 County of Santa Cruz and finds no evidence it ever was.

5 7. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
6 ("MERS") is shown as a separate Delaware corporation with an
7 address of P.O. Box 2026, Flint, MI 48501-2026. (See attached
8 Exhibit No. 8) The Delaware Division of Corporations shows two
9 entries/entities for MERS; one incorporated 10/16/1995 and
10 another incorporated on 01/01/1999. (See attached Exhibit No.
11 2) The California Secretary of State website has two entries
12 for MERS. One entry dated 07/21/2010 shows an "ACTIVE" Status.
13 (See Exhibit No. 2 p.5-6) COX is therefore informed and
14 believes, and thereon alleges, that MERS was not registered or
15 licensed to conduct business in California or the County of
16 Santa Cruz prior to 07/21/2010.

17 8. Defendant THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW
18 YORK AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATEHOLDERS CWMBS,
19 INC. CHL MORTGAGE PASS-THROUGH TRUST 2005-2 MORTGAGE PASS-
20 THROUGH CERTIFICATES, SERIES 2005-2 ("BONYM"), was an entity
21 unknown to COX until mentioned in various documents provided by
22 other Defendants, namely RECON and MERS. (See Exhibit Nos. 7, 9
23 and 14) Upon a search on the MERS website ([http://www.mers-
25 servicerid.org](http://www.mers-
24 servicerid.org)) "Investor" is shown as "The Bank of New York
26 Mellon, N.A. CYPRESS, CA". (See Exhibit No. 15) COX is
therefore informed and believes, and thereon alleges that

1 Defendant BONYM is one and the same entity listed as the
2 "Investor" on the MERS website and that BONYM is a Mortgage
3 Backed Securities Trust formed under strict New York Trust Laws
4 and of an unknown capacity to conduct business in California or
5 the County of Santa Cruz. (Also see Exhibit No. 14 and/or
6 [http://www.secinfo.com/\\$/SEC/Registrant.asp?CIK=1316260](http://www.secinfo.com/$/SEC/Registrant.asp?CIK=1316260) and
7 Exhibit No. 15)

8 9. Defendant AMERICA'S WHOLESALE LENDER ("AWL") was listed
9 as a "CORPORATION organized and existing under the laws of NEW
10 YORK" and as the "Lender" in the recorded Deed of Trust dated
11 December 10, 2004. (See Exhibit No. 8) The State of New York
12 Division of Corporations shows AWL being registered on December
13 16, 2008 as a New York Domestic Business Corporation. (See
14 Exhibit No. 3) COX is informed and believes, and thereon
15 alleges, that AWL, at all times mentioned herein, is not
16 registered or licensed to conduct business in California or the
17 County of Santa Cruz and has found no evidence it ever was.
18 That AWL as "Lender" was "[a] CORPORATION existing under the
19 laws of NEW YORK" "Lender's address is P.O. Box 10219, Van Nuys,
20 CA 91410-0129" as purported in the DOT (see Exhibit No. 8 p.3 ¶
21 C) was misleading and untrue.

22 10. Defendant COUNTRYWIDE HOME LOANS, INC. ("CWHL") is
23 currently registered in California as a Corporation and at all
24 times mentioned herein, doing business in the State of
25 California and County of Santa Cruz. (See Exhibit No. 4)
26 ///

1 CWHL was the "originator" of the purported "loan" and "mortgage
2 transaction" the subject of this action.

3 11. Defendant BAC HOME LOANS SERVICING, L.P. ("BAC") is
4 registered in California as a Limited Liability Company and at
5 all times mentioned herein, doing business in the State of
6 California and County of Santa Cruz. (See Exhibit No. 5) BAC
7 has been purported to be a subsidiary of Bank of America, N.A.
8 Given the numerous name type styles used by Bank of America and
9 or/its subsidiaries and misleading nature of these different
10 names and initials or abbreviations that have been used; "BAC"
11 shall be used herein, to include any and all versions of the
12 Bank of America name type style, including but not thereby
13 limited to, BAC, BAC Home Loans Servicing, Bank of America,
14 N.A., Bank of America, National Association, etc.

15 12. COX is ignorant of the true names and capacities and/or
16 degrees of responsibility of defendants sued herein as DOES 1-
17 1000, and therefore, sues these defendants by such fictitious
18 names. COX will amend her complaint to allege their true names
19 and capacities when ascertained. COX is informed and believes
20 and thereon alleges that each of the fictitiously named
21 defendants are responsible in some manner for the occurrences
22 herein alleged, and that COX's losses as herein alleged were
23 proximately caused by Defendants' their agents, successors or
24 assigns conduct.

25 ///

26 ///

1 STATEMENT OF FACTS AND GENERAL ALLEGATIONS

2 13. COX purchased her Property in 1998. In 2004, she
3 refinanced the Property to get a lower rate and to pay off her
4 previous loan. As CWHL was the company COX dealt with, COX was
5 led to believe that CWHL was lender. As was subsequently
6 discovered, CWHL was merely the loan "originator" and initially
7 acted as the loan "servicer" and a "straw man" for the
8 undisclosed true "lender." Upon closing the loan transaction at
9 First American Title Company in Santa Cruz California, COX
10 believes she executed an "ADJUSTABLE RATE NOTE" apparently in
11 favor of AWL ("Note") and a "DEED OF TRUST" ("DOT") on
12 12/10/2004; each of which was included within a large stack of
13 other closing documents for COX to sign.

14 14. COX did not recognize, nor was it pointed out to her,
15 that AWL was listed as the "Lender" in the closing documents.
16 (See Exhibit No. 6 p.1 ¶ 1 and Exhibit No. 8 p.2 ¶ C) A Deed of
17 Trust was subsequently recorded in the Official Records of Santa
18 Cruz County ("Recorder's Office", "Record" or "Recorded") as
19 document number 2004-0089505 on 12/21/2004.

20 15. After a number of years of receiving statements from; and
21 paying CWHL mortgage payments, sometime between April and June
22 of 2009, COX started receiving payment statements from Bank of
23 America using various different name styles. Due to a different
24 company attempting to collect payments and COX starting to have
25 servicing problems including misplaced and improperly applied
26 payments, she started sending Qualified Written Requests under

1 RESPA ("QWR or QWRs") to both CWHL and BAC¹ to try and verify the
2 status of her loan. Both CWHL and BAC refused to comply fully
3 with COX's QWR requests but each sent some copies of documents,
4 two of which, were purported to be copies of the Note and DOT.
5 The copies of the Note and DOT sent by both companies appeared
6 identical and each was not a copy of the original COX asked for.
7 Each document received was a copy **of a copy** as evidenced by the
8 title company stamp on the top of the pages. (Compare the
9 recorded copy of the DOT in Exhibit No. 8 to the copies sent by
10 CWHL and BAC as Exhibit No. 22)

11 16. Bank of America, stated it was the parent company for BAC
12 in a letter dated June 24, 2009, and purported that "The owner
13 of this loan is Bank of New York whose address is 101 Barclay
14 St, 4W New York, NY 10286." (See Exhibit No. 7 p.2 ¶ 3) This
15 is the first and only time COX ever heard of any alleged
16 involvement of the Bank of New York. (Also see Exhibit No. 13)

17 17. Exhibit Nos. 7 and 13 also state that "Bank of America
18 services the loan on behalf of the owner." COX was never
19 notified within 15 days of any change of servicer (Servicing
20

21 ¹ COX submitted numerous QWRs to all Defendants except to BONY or
22 BONYM asking for copies of both sides of the original Note
23 including any evidence indorsement, assignment or allonge. Each
24 Defendant failed to provide such evidence that they or anyone
25 else had any legal possession of the original Note. All any
26 Defendant provided were copies **of a copy** of the Note (evidenced
by the Title Company stamp on it) with Defendant CWHL indicating
that what they produced were all the documents they had;
therefore tacitly admitting the original note did not exist.
(See Exhibit No. 12 § 2 and Exhibit No. 13 p.2 § 4).

1 Transfer Statement) by either the original servicer CWHL, Bank
2 of America or BAC (which is a violation of the Real Estate
3 Settlement Procedures Act ("RESPA") 12 U.S.C. § 2605.)

4 18. RECON purported to be "[a]cting as an agent for the
5 Beneficiary..." under the DOT and caused a "NOTICE OF DEFAULT AND
6 ELECTION TO SELL UNDER DEED OF TRUST" ("NOD") to be Recorded as
7 document number 2009-0055087 on 11/24/2009. (See Exhibit No. 9)

8 19. The NOD listed BONYM as the contact to find out the
9 amount COX was allegedly required to pay or arrange for payment
10 to stop the foreclosure. This was the first time COX ever heard
11 of any alleged involvement of BONYM. (See Exhibit No. 9 p.2 ¶ 1)

12 20. The NOD further purported that RECON was acting as an
13 agent for the beneficiary under the DOT, supposedly executed by
14 COX "[a]s Trustor, to secure certain obligations in favor of
15 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. as beneficiary..."
16 (See Exhibit No. 9 p. 2 ¶ 4) This is the first time COX ever
17 heard of any involvement of RECON.

18 21. On 12/07/2009; RECON caused to be Recorded a
19 "SUBSTITUTION OF TRUSTEE AND ASSIGNMENT OF DEED OF TRUST"
20 ("ST&ADOT") as document number 2009-0056700, which purported
21 that MERS was the "Beneficiary" in the DOT. (See Exhibit No.
22 10)

23 22. On July 12, 2010 COX sent a "NOTICE OF NON-COMPLIANCE,
24 WRONGFUL FORECLOSURE AND DEMAND TO CEASE AND DESIST" ("Demand")
25 to RECON alleging their lack of authority and also notifying
26 them of the forgeries COX identified in the copies of copies of

1 all, it is dischargeable in COX's Chapter 7 proceeding as an
2 unsecured debt. COX further contends that the DOT is voidable
3 for the reasons stated herein above (and hereby declares it
4 void) and/or void because of the forgeries contained in the DOT
5 as constructively noticed by COX's declaration recorded on
6 07/02/2010 as document number 2010-0025490. (see Exhibit No. 16)
7 COX is informed and believes and thereon alleges, based on the
8 Recorded documents, statements being received; and, attempts to
9 foreclose on COX's Property, that Defendants contend that the
10 DOT and Note are enforceable and they somehow have a remaining
11 interest in the Property.

12 29. COX desires a judicial determination and declaratory
13 relief by such determination of COX's and Defendants' respective
14 rights and duties; specifically, that the 12/10/2004 DOT is
15 ineffective, void and a legal nullity and that any interest
16 claimed thereby is null and void or at the very least, unsecured
17 and dischargeable in her Chapter 7 Bankruptcy.

18
19 **SECOND CLAIM FOR RELIEF**
20 **[Declaratory Relief to Disallow Claims as Secured and Cancel**
21 **Security Instrument]**
22 **[As to All Defendants]**

23 30. COX incorporates the allegations contained in paragraphs
24 1-29 by reference as though fully set forth hereat.

25 31. The written instrument that purports to be a Deed of
26 Trust allegedly executed by COX is alleged to presently exist
under at least one of the Defendants' control. A certified copy
///

1 of the recorded instrument is marked Exhibit No. 8 and attached
2 hereto and incorporated by reference in this Complaint.

3 32. The DOT is voidable because there is no valid,
4 enforceable, and to date, no evidence that the actual Note, for
5 the DOT to secure it, exists.

6 33. Because the Note and DOT were titled to AWL as the
7 "Lender" a New York Corporation, which did not exist, and AWL
8 was not a legal entity at the time the instruments were drafted
9 and purportedly signed; both the Note and DOT are invalid
10 instruments and the Property remains unsecured. (See, Cal. Civ.
11 Code §§ 1558 and 1559 as applicable)

12 34. In addition, by the constructive notice by COX's
13 Recording of the Declaration attached as Exhibit No. 16, the DOT
14 is void due to the forgeries contained therein. COX herewith
15 notifies Defendants, and each and every one, that the DOT
16 attached as Exhibit No. 8 for the reasons stated hereinabove, is
17 void and respectfully requests that this Court cancel the DOT
18 declaring it null and void and without any force and/or effect.

19 35. Whether or not the Court cancels the DOT as invalid or
20 void, COX is informed and believes and thereon alleges, as
21 claimed elsewhere within this Complaint, Defendants, their
22 agents, successors or assigns, in attempting to securitize the
23 DOT have separated the DOT from the Note and caused a fatal
24 break in the chain of, and irreversibly clouded the title.

25 36. Evidenced herein and attached as Exhibit No. 13 p.2 ¶ 4,
26 is a letter from Defendant CWHL dated April 22, 2009, along with

1 two letters from Bank of America Home Loans attached as Exhibit
2 No. 7 p.2 ¶ 3 and Exhibit No. 17 p.2 ¶ 6, in response to COX's
3 QWRs, state the "owner of [the] loan" is "Bank of New York whose
4 address is 101 Barclay St. 4W, New York, NY 10286." ("BONY")

5 37. The purported DOT clearly states that AWL is the "Lender"
6 and there has been no recorded assignment of the DOT and
7 indorsement of the Note to BONY (or anyone else) by AWL
8 produced. In addition; by RECON wrongfully and fraudulently
9 recording the ST&ADT on 12/17/2009, the purported DOT was
10 further removed from the Note, irreversibly and fatally clouding
11 title (an A to D attempted assignment or transfer). If the loan
12 was actually "securitized", any authorized assignment of the
13 purported DOT and alleged indorsement of the Note had to comply
14 with the Pooling and Servicing Agreement² per strict New York
15 Trust Laws, associated IRS REMIC Rules and put into the pool.
16 There has been no evidence to date that this occurred.

17 37. Because of the breaks in and cloud on title, bifurcation
18 of the DOT from the Note and associated fraudulent attempts to
19 assign the DOT absent indorsement and/or perfection of the Note,
20 and any and all claims Defendants might make as unsecured and

21
22 ²See Exhibit No. 14 p.298 re the requirements related to
23 complying with the assignment of mortgage assets including the
24 original security agreement (DOT), an assignment of mortgage in
25 recordable form; the original note endorsed without recourse in
26 blank or to the order of the trustee, etc. Note; the cut-off
date for the loan pool was January 1, 2005. RECON has attempted
to assign the mortgage as agent for MERS some 4 years later to
BONYM the attached report attached as Exhibit No. 14 shows the
breaks in the chain of title causing the loan to be unsecured.

1 COX respectfully requests this Court declare the alleged loan
2 discharged in COX's Chapter 7 Bankruptcy; and, cancel the
3 security instrument (DOT).

4 **THIRD CLAIM FOR RELIEF**

5 **[Injunctive Relief to Stop Foreclosure Action]**

6 **[As to RECON and MERS]**

7 38. COX incorporates the allegations contained in paragraphs
8 1-37 by reference as though fully set forth hereat.

9 39. Defendant RECON has commenced foreclosure action against
10 COX purportedly allowed under the DOT. Even though the
11 automatic stay thus far remains in place and said foreclosing
12 Trustee's Sale was most recently shown on RECON'S website to be
13 scheduled for March 28, 2011 was subsequently cancelled, COX
14 contends that any such scheduling in and of itself was a
15 violation of the automatic stay. Notwithstanding the scheduling
16 of the Trustee Sale, should RECON have actually conducted the
17 Trustee Sale, certainly selling the Property would have violated
18 the automatic stay. Although there is currently no evidence
19 that RECON has scheduled any new Trustee's Sale(s); scheduling
20 then rescheduling the Trustee's Sales, has been the pattern of
21 RECON. Any associated sale of the Property would cause COX
22 great and irreparable injury, in that property is inherently
23 unique, and COX would not have the beneficial use and enjoyment
24 of her property when losing her home. Therefore; given RECON
25 and MERS past behavior of scheduling Trustee's Sales even with
26 the automatic stay in place, and COX not knowing from one minute
to the next if the sale will actually take place, each Defendant

1 must be enjoined from scheduling or conducting any such sale at
2 any time now or in the future.

3 40. The DOT lists MERS as a purported "[S]eparate corporation
4 that is acting **solely as a nominee** for Lender and Lender's
5 successors or assigns. MERS is the beneficiary under this
6 Security Instrument." (Emphasis added) (See Exhibit No. 8 p.2 ¶
7 E) According to the California Secretary of State's website,
8 MERS was not registered or licensed to conduct business in
9 California during the time which RECONTRUST purports, pursuant
10 to the DOT, that MERS was the alleged beneficiary. (See ¶ 7
11 above and the DOT Exhibit No. 8) There have been many cases
12 throughout the Country where Courts have ruled MERS is NOT a
13 true beneficiary³. Therefore; for this, among other reasons, the
14 NOD recorded by RECON purporting to be an agent for the
15 beneficiary MERS, was invalid and fraudulently recorded. The
16 ST&ADOT states "[t]he present beneficiary under such deed of
17 trust has executed and delivered to RECONTRUST COMPANY, N.A.
18 such deed of trust and all documents evidencing obligations

19

20 ³The NOD purports that RECON was acting as an agent for the Beneficiary
21 under a Deed of Trust dated 12/10/2004. MERS has no pecuniary
22 interest, nor does MERS accept payments; therefore, MERS is NOT a
23 beneficiary and cannot record the DOT, NOTS, assign the DOT or
24 substitute the foreclosing trustee. See, In Re *Rickie Walker* Case No.
25 10-21656-E-11 in the Eastern District of California in which the court
26 ruled that MERS could only transfer whatever interest it had in the
Deed of Trust. Further, as expressly stated in ¶ 24 of the DOT
(Exhibit No. 8): only the "Lender, at its option, may from time to
time appoint a successor trustee..." and "This procedure for
substitution of trustee shall govern to the exclusion of all other
provisions for substitution." (emphasis added) Therefore, only the
actual Lender shall make a substitution of trustee.

1 secured," if MERS executed the documents as therein stated then
2 they were fraudulent executed and recorded because MERS was
3 merely a nominee, not a true beneficiary.

4 41. As stated herein, MERS was, and is not, a real party in
5 interest; was and is not, a true beneficiary; was not registered
6 to conduct business in California prior to 07/21/2010 (see ¶ 7
7 above); only the Lender was authorized to substitute a trustee
8 (see footnote 3 on p.16); and therefore, MERS did not have then
9 nor does it now, have any authority to substitute a trustee or
10 assign the DOT, which is ultra vires and void. Accordingly
11 RECON could not do, as a purported agent for MERS, what MERS
12 could not, as a matter of law, do for itself. Therefore neither
13 MERS nor its purported agent RECON had then, nor does it have
14 now, the requisite authority to foreclose on COX's Property.

15 42. COX has no other plain, speedy or adequate remedy and the
16 injunctive relief prayed for pursuant to Bankruptcy Rule 7065 of
17 the Federal Rules of Civil Procedure is necessary and
18 appropriate given the past and continued wrongful conduct of
19 RECON, MERS and the other Defendants in order to prevent the
20 irreparable loss COX would suffer.

21 **FOURTH CLAIM FOR RELIEF**

22 **[Quiet Title]**

23 **[As to All Defendants including all persons unknown, claiming**
24 **any legal or equitable right, title, estate, lien, or interest**
25 **in the property described in the complaint**
26 **adverse to COX's title]**

43. COX incorporates the allegations contained in paragraphs
1-42 by reference as though fully set forth hereat.

1 44. COX is the owner in fee simple and in possession of the
2 Property which is COX's homestead; and to which the homestead
3 exemption applies. (See, Recorded Homestead Declaration Exhibit
4 No. 18)

5 45. COX is informed and believes and thereon alleges, that
6 all Defendants, including all persons unknown, claiming any
7 legal or equitable right, title, estate, lien, or interest in
8 the property described in the complaint adverse to COX's title,
9 or any cloud upon COX's title thereto, wrongfully claim an
10 interest or interests adverse to COX in COX's Property.

11 46. COX therefore seeks to quiet title as of a date to be
12 determined; solely in favor of COX and against all Defendants,
13 and each of them, as to the Property located at 131 Sutphen St.,
14 Santa Cruz, CA 95060.

15 WHEREFORE, COX prays for judgment as follows:

16 A. That the Court issue a permanent injunction forever
17 enjoining and restraining Defendants, their agents, attorneys,
18 representatives, and all persons acting in concert or
19 participating with them, from conducting a foreclosure sale on
20 the real property located at 131 Sutphen St., Santa Cruz,
21 California 95060, and each of them from claiming any estate
22 right, title or interest in the Property; and

23 B. That the Court issue a declaration of rights regarding the
24 propriety of the Deed of Trust and the Notice of Trustee Sale
25 recorded against the Property; and a determination that COX is
26 the sole rightful holder of title to the Property; and that

1 Defendants herein and each of them, be declared to have no
2 estate, right, title or interest in said Property; and

3 C. The Court declares the recorded Deed of Trust is void and
4 any debt related thereto dischargeable and discharged in COX's
5 Chapter 7 bankruptcy; and

6 D. The Court order that title to the real property located
7 at 131 Sutphen St., Santa Cruz, California 95060 vests solely in
8 COX and title is forever quieted against all Defendants and each
9 of them, and all persons known or unknown, claiming any legal or
10 equitable right, title, estate, lien, or interest in the
11 Property described in this Complaint adverse to COX'S title; and

12 E. That COX recover her attorney's fees and costs in this
13 action; and

14 F. That the Court awards all other appropriate relief the
15 Court deems just and proper.

16

17 Dated: 04/12/2011

18

19

/s/ Timothy Y. Fong
Timothy Y. Fong
Attorney for Kimberly Cox

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VERIFICATION AND DECLARATION

1
2 I verify and declare that the foregoing Complaint has been
3 reviewed by me; and that the allegations therein are true and
4 correct to the best of my knowledge, information and belief as
5 executed on this 12th day of APRIL, 2011.

6
7 

8 _____
Kimberly Cox
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Exhibit D



The following constitutes
the order of the court. Signed June 17, 2011

Charles Novack

Charles Novack
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
KIMBERLY COX,
Debtor.

Case No. 10-61716 CN
Chapter 7

KIMBERLY COX,
Plaintiff,

Adversary No. 11-5106

vs.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS ADVERSARY
PROCEEDING**

AMERICAN'S WHOLESALE LENDER,
THE BANK OF NEW YORK MELLON,
COUNTRYWIDE HOME LOANS, INC.,
BAC HOME LOANS SERVICING, LP
RECONTRUST COMPANY, N.A.,
Defendants.

On June 10 2011 this Court heard Defendants' motion to dismiss the adversary proceeding.
Appearances were stated on the record. Good cause appearing;

IT IS HEREBY ORDERED that for the reasons stated on the record, Defendants' motion to
dismiss adversary proceeding is granted.

*** END OF ORDER ***

COURT SERVICE LIST

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Timothy Yett Suen Fong
Law Offices of Timothy Y. Fong
3333 Bowers Ave., # 130
Santa Clara, CA 95054

Adam N. Barasch
Bernard Kornberg
Severson and Werson
One Embarcadero Center #2600
San Francisco, CA 94111

Notice Recipients

District/Off: 0971-5
Case: 11-05106

User: kdu
Form ID: pdfeoapc

Date Created: 6/17/2011
Total: 3

Recipients of Notice of Electronic Filing:

aty	Adam N. Barasth	anb@severson.com
aty	Bernard Kornberg	bjk@severson.com
aty	Timothy Yett Suen Fong	tyfong919@gmail.com

TOTAL: 3

Exhibit E

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

In re:

KIMBERLY COX and
AMERICA'S WHOLESALE LENDER,

Case No. 10-61716
Chapter 7
San Jose, California
June 10, 2011
3:04 p.m.

Debtors.

KIMBERLY COX,
Plaintiff,

v.

A.P. No. 11-5106

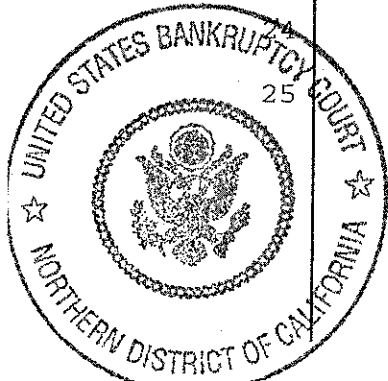
AMERICA'S WHOLESALE LENDER, et al.,
Defendants.

TRANSCRIPT OF PROCEEDINGS

- a) MOTION TO DISMISS ADVERSARY PROCEEDING FOR LACK OF STANDING, FOR LACK OF SUBJECT MATTER JURISDICTION, FOR ABSTENTION, AND FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED FILED BY AMERICA'S WHOLESALE LENDER
- b) OBJECTION AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS; PLAINTIFF'S COUNTER-MOTION TO STRIKE DEFENDANTS' MOTION TO DISMISS; COUNTER-MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT; AND DEFENDANTS' FAILURE TO COMPLY WITH FEDERAL RULE OF BANKRUPTCY PROCEDURE 7007.1(a) and (b) by KIMBERLY COX, PLAINTIFF

BEFORE THE HONORABLE CHARLES NOVACK
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
Northern District of California
I certify that this is a true, correct and full copy of the original document on file in my custody.
Dated 6/13/12
by [Signature]
Deputy Clerk



1 APPEARANCES:

2 For the Plaintiff/
3 Debtor:LAW OFFICES OF TIMOTHY Y. FONG
BY: TIMOTHY Y. FONG, ESQ.
3333 Bowers Avenue #130
Santa Clara, California 95084

4

5

6 For the Defendants:

SEVERSON and WERSON
BY: BERNARD KORNBERG, ESQ.
1 Embarcadero Center, 26th Floor
San Francisco, California 94111

7

8

(APPEARING TELEPHONICALLY)

9

10 Court Recorder:

KATIE ROSE
UNITED STATES BANKRUPTCY COURT
280 South First Street
San Jose, California 95113

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14 Transcription Service:

Jo McCall
Electronic Court
Recording/Transcribing
2868 E. Clifton Court
Gilbert, Arizona 85295
Telephone: (480) 361-3790

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P R O C E E D I N G S

1
2 June 10, 2011

3:04 p.m

3
-oOo-4 THE CLERK: Item 7, Cox versus Recontrust Company.5 MR. KORNBERG: Bernard Kornberg for the moving
6 party -- I'm sorry, for Defendants.7 MR. FONG: Timothy Y. Fong for Plaintiff Kimberly
8 Cox.9 THE COURT: Okay. Good afternoon counsel. I
10 apologize for the delay here. I've read all the briefs.
11 Is there anything else to be added here?12 MR. FONG: Yeah, Your Honor, all I really have to
13 say is this is really a story of entities who cannot do
14 anything right. This process has been shot through with
15 problems from the beginning. Mr. Kornberg appears today
16 claiming that he's here on behalf of America's Wholesale
17 Lender and all of the Defendants, but we sued America's
18 Wholesale Lender, a New York corporation, which is the
19 entity that is in the deed of trust, and now we have
20 discovered -- and we have documented this with
21 affidavits -- that there was never an America's Wholesale
22 Lender, a New York corporation, at the inception of this
23 apparent deed of trust or supposed deed of trust and note.
24 So this is just an entire process that is shot through with
25 problems, and we've attempted to respond to Mr. Kornberg's

1 moving papers, but they're so full of non-sequiturs, as
2 again we've detailed in our reply, that it's difficult to
3 know where to start with that, but it's just a process
4 that's shot through with entities who can't do anything
5 right here.

6 MR. KORNBERG: Your Honor --

7 THE COURT: I've read your briefs, Mr. Kornberg,
8 so you don't need to respond. I mean if you're going to
9 repeat what you said in your briefs, you don't need to.

10 MR. KORNBERG: Yeah, all I was going to say is
11 that, you know, regardless of what he's saying, there's no
12 standing here, so it doesn't matter what authority I have
13 or had not to represent --

14 THE COURT: I understand. Is the matter
15 submitted?

16 MR. KORNBERG: Yes, Your Honor.

17 THE COURT: Mr. Tim?

18 MR. FONG: Yes, Your Honor.

19 THE COURT: Okay. This is the Defendants' motion
20 to dismiss this complaint under Federal Rule of Bankruptcy
21 Procedure 7012 on sever grounds, including that the
22 Plaintiff lacks standing; that the Court lacks subject
23 matter jurisdiction; and that the claims themselves fail to
24 state a claim for relief. And this is an adversary
25 proceeding filed in a Chapter 7 case. The claims for

1 relief were not listed on the Debtors' bankruptcy
2 schedules.

3 While the trustee has filed a no-asset report --
4 the Chapter 7 trustee has filed a no-asset report, these
5 claims are not as a result of the filing of that no-asset
6 report, deemed to be abandoned to the Debtor. I agree with
7 the Defendants' analysis of Bankruptcy Code Section 554
8 which is abandonment. Property not listed on the schedules
9 is never administered and thus never abandoned. Since
10 these claims arise from pre-petition events, Mr. Tim, they
11 are pre-petition claims which are property of the
12 bankruptcy estate. Only the Chapter 7 trustee has standing
13 to assert claims which are property of the bankruptcy
14 estate. I also note for the record that the Court declined
15 to sign the abandonment order submitted by the Debtor/the
16 Plaintiff.

17 So to the extent that these claims haven't been
18 abandoned, only the Chapter 7 trustee has the authority to
19 assert these claims, so on that ground, your client doesn't
20 have standing if these claims haven't been abandoned.

21 MR. FONG: Well, Your Honor, I would argue that --

22 THE COURT: Wait. Wait. Alternatively, even if
23 these claims had been abandoned by the Debtor, Defendants
24 correctly contend that this Court does not have -- or does
25 not intend to exercise subject matter jurisdiction over

1 these claims. Bankruptcy Courts are courts of limited
2 jurisdiction. I refer people to Battle Ground Plaza versus
3 Ray, 624 F3d, 1124, 9th Circuit (2010) as a good primer on
4 subject matter jurisdiction. I have jurisdiction over
5 claims that arise in, arise under, or are related to the
6 bankruptcy case. The claims at issue do not satisfy any of
7 these standards.

8 These claims do not arise in the bankruptcy case
9 because they are not administrative matters unique to the
10 Bankruptcy Code that have no independent existence outside
11 of bankruptcy. So they don't arise in the case. These
12 claims do not arise under the Bankruptcy Code because they
13 are not claims created by the Bankruptcy Code. Instead,
14 they are claims originating in non-bankruptcy law, so they
15 don't arise under.

16 Finally, these claims are not related to the case
17 because this is a no-asset case as stated by the trustee
18 and not related in any way to the administration of this
19 case. Once these claims are abandoned, the Debtor can go
20 about her life without any further supervision by the
21 Bankruptcy Court and I therefore intend to deny the motion.

22 Mr. Tim, you wanted to say something?

23 MR. FONG: Yes, Your Honor, the issue here is that
24 these claims did arise out of the bankruptcy because we had
25 submitted this debt as unsecured, and that's what created

1 this entire --

2 THE COURT: Mr. Tim, these claims predate the
3 filing of the bankruptcy. They predate the filing of the
4 bankruptcy. Their genesis predates the filing of this
5 bankruptcy. Therefore, they're pre-petition claims,
6 property of the bankruptcy estate. You may have filed this
7 adversary proceeding post-petition, but that doesn't change
8 the fundamental nature of these claims, which is they arose
9 before the bankruptcy filing, therefore they're pre-
10 petition claims. Therefore, they're property of the estate
11 and if the Debtor hasn't abandoned them, then the trustee
12 has standing. If the Debtor has abandoned them, the Court
13 doesn't have jurisdiction. So either way, the motion is
14 granted.

15 MR. FONG: Thank you, Your Honor.

16 THE COURT: And the Court will enter its own
17 order.

18 MR. KORNBERG. Thank you, Your Honor. Your
19 Honor?

20 THE COURT: Yes.

21 MR. KORNBERG: Is the status conference then also
22 going to be taken off calendar?

23 THE COURT: Yeah, I believe the status conference
24 is August; am I correct?

25 MR. KORNBERG: July 5th, I believe.

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THE COURT: July. Yeah, that's off calendar.

MR. KORNBERG: Thank you, Your Honor.

THE CLERK; That concludes Item 7.

(Whereupon, the proceedings are concluded at 3:10

p.m.)

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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

DATED: July 12, 2011

UNITED STATES BANKRUPTCY COURT
Northern District of California

In Re: Kimberly Cox and America's Wholesale Lender Debtor(s)	Case No.: 10-61716 Chapter: 7
Plaintiff(s) Kimberly Cox Kimberly Cox vs.	Adversary Proceeding No. 11-05106
America's Wholesale Lender et al. Defendant(s)	

**NOTICE OF FILING OF TRANSCRIPT
AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION**

A transcript of the proceeding held on June 10, 2011 was filed on Tuesday, July 12, 2011. The following deadlines apply:

The parties have Tuesday, July 19, 2011 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a request for redaction is Tuesday, August 2, 2011.

If a request for redaction is filed, the redacted transcript is due Friday, August 12, 2011.

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is Tuesday, October 11, 2011, unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber,

Jo McCall
Jo McCall Court Reporting
2868 East Clifton Court
Gilbert, AZ 85297

or you may view the document at the clerk's office public terminal.

Dated: 7/14/11

For the Court:

Gloria L. Franklin
Clerk of Court
United States Bankruptcy Court

Notice Recipients

District/Off: 0971-5

User: kdu

Date Created: 7/12/2011

Case: 11-05106

Form ID: TRANSAP

Total: 3

Recipients of Notice of Electronic Filing:

aty Bernard Kornberg bjk@severson.com
aty Timothy Yett Suen Fong tyfong919@gmail.com

TOTAL: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):

ust Office of the U.S. Trustee / SJ U.S. Federal Bldg. 280 S 1st St. #268 San Jose, CA 95113-3004

TOTAL: 1

Exhibit F

GAIL L PELLERIN

Santa Cruz County Clerk
701 Ocean Street, Room 210
Santa Cruz, CA 95060
Santa Cruz



FBN Number: 2001-0000592

This statement was filed in the office of
GAIL L PELLERIN, County Clerk
of Santa Cruz County,
on March 22, 2001,

By: _____
Deputy

**FICTITIOUS BUSINESS NAME STATEMENT
FIRST FILING - PUBLICATION REQUIRED WITHIN 30 DAYS**

Began Transacting Business : 2/1/1993

Statement Expires On : 3/22/2006

Business Is Conducted By : Corporation

Business Address :

4500 PARK GRANADA CH-11
CALABASAS, CA 91302
County of Los Angeles

Mailing Address :

Fictitious Business Name(s) :

**AMERICA'S WHOLESALE
LENDER**

Registrant Address(es) :

**COUNTRYWIDE HOME
LOANS, INC.**
4500 PARK GRANADA CH-11
CALABASAS, CA 91302
AI#: 743490
State: NY

NOTICE - IN ACCORDANCE WITH SUBDIVISION (a) OF SECTION 17920, A FICTITIOUS NAME STATEMENT GENERALLY EXPIRES AT THE END OF FIVE YEARS FROM THE DATE ON WHICH IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK, EXCEPT, AS PROVIDED IN SUBDIVISION (b) OF SECTION 17920, WHERE IT EXPIRES 40 DAYS AFTER ANY CHANGE IN THE FACTS SET FORTH IN THE STATEMENT PURSUANT TO SECTION 17913 OTHER THAN A CHANGE IN THE RESIDENCE ADDRESS OF A REGISTERED OWNER. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THE EXPIRATION.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of a crime.)

Registrant other than an individual sign below:

Signature _____

Print Name _____

Entity Name _____

Signature _____

Print Officer's Name
and Title _____

GAIL L PELLERIN

1 **PROOF OF SERVICE**

2 At the time of service, I was over 18 years of age and not a party to this action. I am
3 employed in the County of San Francisco, State of California. My business address is One
4 Embarcadero Center, Suite 2600, San Francisco, CA 94111.

5 On June 15, 2012, I served true copies of the following document(s):

6 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS'
7 DEMURRER TO PLAINTIFF'S COMPLAINT**

8 on the interested parties in this action as follows:

9 Timothy Y. Fong, Esq.
10 3333 Bowers Avenue, Suite 130
11 Santa Clara, CA 95054

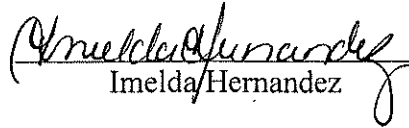
12 Phone: 408.627.7810
13 Fax: 408.457.9417
14 Email: tyfong919@gmail.com

15 Attorney for Plaintiff,
16 Kimberly Cox

17 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
18 persons at the addresses listed above and placed the envelope for collection and mailing, following
19 our ordinary business practices. I am readily familiar with Severson & Werson's practice for
20 collecting and processing correspondence for mailing. On the same day that the correspondence is
21 placed for collection and mailing, it is deposited in the ordinary course of business with the United
22 States Postal Service, in a sealed envelope with postage fully prepaid.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed on June 15, 2012, at San Francisco, California.

26 
27 Imelda Hernandez
28